

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 29, 2002

TO : Rosemary Pye, Regional Director
Ronald Cohen, Regional Attorney
Paul Rickard, Assistant to Regional Director
Region 1

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Laidlaw Educational Services, Waltham Div.
Case 1-CA-39710 530-2075-6767-0814
530-2075-6767-0884
737-4267-7500

This Section 8(a)(2) case was submitted for advice on whether two Union authorization cards are invalid because the solicitor misrepresented that the cards would be used "only" for the purpose of getting a meeting with the Union.

We conclude, in agreement with the Region, that the authorization cards are invalid because they were misrepresented to be for a single, restricted purpose other than to designate the Union.

FACTS

The Union began organizing the Employer's drivers in November 2001. The Employer agreed to voluntarily recognize the Union if a federal mediator found that it had obtained a card majority. On December 27, a federal mediator determined that the Union in fact had obtained a majority because it possessed cards from 25 employees in a unit of 47 employees. However, the Region determined that the mediator improperly excluded two trainees from the unit, one of whom had signed a card. The Region thus found that the Union obtained a majority of 26 cards in a unit of 49 employees. The Union will lose its majority, even under the mediator's view, if two cards become invalid.

The Union authorization cards clearly and unambiguously designate the Union to be the exclusive bargaining representative. [FOIA Exemptions 6 and 7(c)], an employee leader of the Union's organizational drive, solicited the cards. The Charging Parties, two unit employee who did not sign cards, attack three of these cards on the basis of statements made by card solicitor [FOIA Exemptions 6 and 7(c)].

Card signer [FOIA Exemptions 6 and 7(c)] avers that [FOIA Exemptions 6 and 7(c)] told her that by filling out the card, the Union could send [FOIA Exemptions 6 and 7(c)] information about what it could do, and then [FOIA

Exemptions 6 and 7(c)] could make her mind about whether she wanted the Union. Card signer [*FOIA Exemptions 6 and 7(c)*] avers that [*FOIA Exemptions 6 and 7(c)*] assured her that the purpose of the card was "only" to get the Union to meet with the employees and tell them what it could do for them. Card signer [*FOIA Exemptions 6 and 7(c)*] avers that [*FOIA Exemptions 6 and 7(c)*] told her that the card would "only" be used to get a meeting to talk with the Union about what it could do for the employees. In sum, [*FOIA Exemptions 6 and 7(c)*] advised [*FOIA Exemptions 6 and 7(c)*] that a purpose of the card would be to obtain information from the Union. In contrast, [*FOIA Exemptions 6 and 7(c)*] advise both [*FOIA Exemptions 6 and 7(c)*] and [*FOIA Exemptions 6 and 7(c)*] that the card would be used "only" to obtain a meeting with the Union to obtain information.

We conclude that the cards of [*FOIA Exemptions 6 and 7(c)*] and [*FOIA Exemptions 6 and 7(c)*] were invalid because [*FOIA Exemptions 6 and 7(c)*] misrepresented the cards to be for a single, restricted purpose other than to designate the Union.¹

An employee signator is bound to the clear, unambiguous language in a union authorization card unless that language was cancelled by a misrepresentation "calculated to direct the signer to disregard and forget the language above the signature."² In Levi Strauss, supra, the Board considered the validity of authorization cards obtained by misrepresentations that the cards would be used for another purpose, i.e., to obtain an election.³ The Board held that it would find to be invalid only those cards obtained by misrepresentations that the cards would be used "only" for the purpose getting an election:

[T]he fact that employees are told in the course of solicitation that an election is contemplated, or that a purpose of the card is to make an election possible, provides in our view *insufficient* basis in itself for vitiating unambiguously worded authorization cards. A

¹ Levi Strauss & Co., 172 NLRB 732, 733 (1968). See also Montgomery Ward & Co., 288 NLRB 126, 128 (1988) remanded on another issue 904 F.2d 1156 (7th Cir. 1990).

² NLRB v. Gissel Packing Co., 395 U.S. 575, 606 (1969). See, e.g., Montgomery Ward & Co. Inc., 197 NLRB 519, 523 (1972) (ALJ found employee Meyers' card invalid on the ground that the card solicitor told Meyers that the cards "were not binding in any way.")

³ See also Cumberland Shoe Corp., 144 NLRB 1268 (1963).

different situation is presented, of course, where union organizers solicit cards on the explicit or indirectly expressed representation that they will use such cards *only* for an election In such a situation, the Board invalidates the cards for majority computation because the nature of the representation is such as to induce a conditional delivery for a restricted purpose and there is apparent fraud when that restriction is exceeded.
Id. at 733 (emphasis in original).

The Board has applied this same principle to other misrepresentations about the "only" purpose for an authorization card.

In Montgomery Ward, supra at note 1, the employer contended that certain cards were invalid because they allegedly were solicited with misrepresentations that their "only" purpose would be to put the signers on a mailing list, or to obtain further information from the union.⁴ The ALJ found that the alleged misrepresentations about the "only" purpose of the cards in fact had not been made, and that the cards therefore were valid. The Board adopted the ALJ's conclusions by noting:

[S]tatements to the effect that signatures are needed to bring in a union, have a meeting, get information, or get an election [footnote omitted] are not inconsistent with the stated representative purpose of the card, and do not negate the written language of the card or amount to a direction to the signer to disregard the written language.^{14/} They do not inform the signer that the "only" purpose of the card is the purpose stated by the solicitor, not the purpose stated on the card [footnote omitted].

^{14/} See NLRB v. Gissel Packing Co., 395 U.S. 575, 606 (1969); Cumberland Shoe Corp., 144 NLRB 1268 (1963).
Id. at 128.

Two of the alleged misrepresentations in Montgomery Ward, to have a meeting or to get more information, are the same type of misrepresentations involved in this case. We

⁴ Employee Cabello allegedly told that "only" purpose of card was to be put on mailing list, Id. at 157; employee Lamping allegedly told that "only" purpose was to get further information from union, Id. at 157; employee Garcia allegedly told that "only" purpose was to get further information from union, Id. at 161; SAME: employee Curiel, Id. at 161-2).

therefore apply the same principle of law used by the Board in that case.⁵ However, unlike in Montgomery Ward, the misrepresentations here were that the "only" purpose of the cards would be for these other uses. We therefore reach the opposite result than that reached in Montgomery Ward.

In sum, we conclude that the authorization cards of [FOIA Exemptions 6 and 7(c)] and [FOIA Exemptions 6 and 7(c)] are invalid because they were solicited with the misrepresentation that their "only" purpose was to have a meeting with and obtain additional information from the Union.⁶

B.J.K.

⁵ We thus reject the ALJ dictum to the contrary in Gordon Mfg. Co., 158 NLRB 1303, 1308 (1966).

⁶ [FOIA Exemption 5]